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**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**  
April 8, 1959  
Opinion No. 59-56

REQUESTED BY: The Honorable Robert E. Morrow  
State Senator, Mohave County  
Twenty-fourth Legislature

OPINION BY: WADE CHURCH  
The Attorney General

QUESTION 1: Can the Legislature, by special bill, control the location of highways without first amending subsection 7 of 18-106 and other statutes?

CONCLUSION: The Legislature in A.R.S. § 18-106(3) delegated to the Highway Commission the authority to locate highways. It is the opinion of this office that before the Legislature can control the location of highways, this section must be amended.

QUESTION 2: Can the Legislature delegate authority to other agencies of state government besides the Highway Department regarding control of highways without amendments to code?

CONCLUSION: Not without an amendment of A.R.S. § 18-106(7), which provides as follows:

"Exercise complete and exclusive control and jurisdiction of the state highways, and prescribe such rules and regulations to govern the use of state highways as it deems necessary for public safety and convenience, and to prevent the abuse and unauthorized use of the highways."

QUESTION 3: Are cities and towns, under the Constitution, allowed to control state highways in any respect? (Art. 4, Pt. 281, page 310, Arizona Code)

CONCLUSION: It is the opinion of this office that cities and towns are not authorized to have any control over state highways. A.R.S. § 18-106(5) provides as follows:

"Authorize the state engineer to enter into agreements on behalf of the state with counties, cities, towns or road districts for the improvement or maintenance of state routes, or for the joint improvement or maintenance thereof, and to enter into contracts for the construction of state highways."

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QUESTION 4: If the answer to 3 is Yes, can they control outside their city limits?

CONCLUSION: No.

QUESTION 5: If the answer to 4 is Yes, how far can their control extend?

CONCLUSION: No control.

QUESTION 6: Is it an unlawful delegation of authority for the legislature to delegate by an Act such authority to cities or towns?

CONCLUSION: No, but A.R.S. § 18-106(7) would have to be amended before there could be a lawful delegation of such authority by the Legislature to cities or towns.

QUESTION 7: Who is the responsible agency for the handling of federal matching funds for building of highways in Arizona?

CONCLUSION: The Highway Department. A.R.S. § 18-106(15) provides as follows:

"Exercise such other powers and duties necessary to carry out fully the provisions of this section, and in general, exercise powers and duties which relate to adopting and carrying out policies of the department and control of its financial affairs."

QUESTION 8: Can the Legislature, by an act, dissipate or set up dual controls and still receive federal funds upon areas under control of other agencies besides the Highway Department?

CONCLUSION: This may be possible. This office is unable to anticipate the fact situation the writer has in mind and therefore cannot presently answer this question.

QUESTION 9: Can the Highway Department be mandamusd to expend state highway funds by any agency, or the Legislature, without amending the present highway laws relating to "powers and authority"?

CONCLUSION: It appears that the Legislature has delegated its authority to the exclusive control of the highway department under A.R.S. § 18-102.

QUESTION 10: Can the state, by using 100% of state funds, build highways competitive to interstate highways?

CONCLUSION: This office cannot find any statutory prohibition to building highways competitive to interstate roads with 100% state funds.

QUESTION 11: Can we be required, by the Federal Bureau, to contribute to the construction of interstate highways upon competitive alignment?

CONCLUSION: This office does not understand the term "competitive alignment."

QUESTION 12: Can the Legislature prohibit the erection of highway signs off the highway right of way?

CONCLUSION: Public Law 85-381, Section 122, provides as follows:

"Sec. 122, AREAS ADJACENT TO THE INTER-STATE SYSTEM.

(a) National Policy.--To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, it is hereby declared to be in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to the Interstate System by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system. It is hereby declared to be a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within six hundred and sixty feet of the edge of the right-of-way and visible from the main-traveled way of all portions of

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the Interstate System constructed upon any part of the right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary, which shall include only the following four types of signs, and no signs advertising illegal activities:

(1) Directional or other official signs or notices that are required or authorized by law.

(2) Signs advertising the sale or lease of the property upon which they are located.

(3) Signs erected or maintained pursuant to authorization or permitted under State law, and not inconsistent with the national policy and standards of this section, advertising activities being conducted at the location within twelve miles of the point at which such signs are located.

(4) Signs erected or maintained pursuant to authorization in State law and not inconsistent with the national policy and standards of this section, and designed to give information in the specific interest of the traveling public.

(b) Agreements.--The Secretary of Commerce is authorized to enter into agreements with State highway departments (including such supplementary agreements as may be necessary) to carry out the national policy set forth in subsection (a) of this section with respect to the Interstate System within the State. Any such agreement shall include provisions for regulation and control of the erection and maintenance of advertising

signs, displays, and other advertising devices in conformity with the standards established in accordance with subsection (a) and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance. Upon application of the State, any such agreement may, within the discretion of the Secretary of Commerce, consistent with the national policy, provide for excluding from application of the national standards segments of the Interstate System which traverse incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use is clearly established by State law as industrial or commercial: Provided, however, that any such segment excluded from the application of such standards shall not be considered in computing the increase of the Federal share payable on account thereof."

It is the opinion of this office that legislation can be prepared that would enable Arizona to comply with the National Policy set forth above.

QUESTION 13: Does the Highway Commission, under the present state law, have the authority to regulate businesses upon access or spur roads?

CONCLUSION: It is the opinion of this office that there does not now exist any legislation which would authorize the commission to regulate businesses upon access or spur roads. Public Law 85-767, Section 111, provides:

"§ 111. Agreements relating to use of and access to rights-of-way--Interstate System.

All agreements between the Secretary and the State Highway Department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use the airspace above and below the established grade line of the highway pavement for the parking of motor vehicles provided such use does not interfere in any way with the free flow of traffic on the Interstate system."

QUESTION 14: Does the Legislature have such authority?

CONCLUSION: Legislation can be enacted that would authorize the commission to have such authority.

QUESTION 15: If they have such authority does it extend to present businesses or apply only to new businesses?

CONCLUSION: The Legislature does not have the authority at this time. The authority could possibly be made to extend to new businesses. It is questionable whether it can be made to apply to old businesses.

QUESTION 16: If highway buildings are built with highway funds can other departments of state use them with the approval of the legislature? (diversion of highway funds)

CONCLUSION: No authority can be found which permits use of highway funds to construct buildings for use by other departments of the state.

QUESTION 17: Can the Legislature or Highway Department build roads upon Indian Reservations without the approval of the tribal councils?

CONCLUSION: No. This office has been advised by the Indian Service that it must have the approval of Tribal Council to build roads upon Indian Reservations.

QUESTION 18: Can the state use Indian lands for highway purposes, for the general good of the state, with condemnation proceedings?

CONCLUSION: No.

QUESTION 19: Is Arizona one of the states where 6 feet of the outside of right of ways, upon new interstate highways, is vested exclusively in the Federal Bureau of Public Roads?

CONCLUSION: No.

QUESTION 20: After the appointment of a commissioner by the Governor, with the consent of the Senate, what control over his actions does the Governor have upon matters relating to "powers and duties" of the commission?

CONCLUSION: A.R.S. § 18-105 provides as follows:

"The governor may remove a member of the commission for cause only, subject to review by the superior court. Notice of a review shall be given within fifteen days after notice of the removal."

It appears from this section that the Governor may remove a member for cause.

QUESTION 21: Can a commissioner be discharged by the Governor without the consent of the Senate?

CONCLUSION: Yes.

QUESTION 22: Can appointment to a commissionership be made, by a Governor, with the requirement of a signed statement of resignation to be retained by the Governor; to be held over his head in event of noncompliance with his wishes?

CONCLUSION: This is a political question. It has no legal implication.

QUESTION 23: In the event of refusal of consent by the Senate to an appointment of the Governor, can a recess appointment be made from the county of rotation or will the old commissioner be held over to the loss of representation of the county of rightful rotation?

CONCLUSION: A.R.S. § 18-102 provides for the rotation of commissioners. Since each district has three counties contained therein, except the first district which only has two, there is no district that is solely entitled to representation.

QUESTION 24: Is it legal to break the sequence of rotation as between counties by noncompliance by the Senate?

CONCLUSION: A.R.S. § 18-102(B) appears to provide rotation by districts and not by counties.

QUESTION 25: Would it be legal for the Legislature to provide for recess appointments by the board of supervisors of the affected county in event of nonaction by the Senate?

CONCLUSION: This procedure could not be followed without amendment of A.R.S. § 18-102(C).

QUESTION 26: Can agreements or covenants with cities, counties or organizations be made regarding roadside parks and plots for historical markers without a recapture clause? (diversion of highway funds and property)



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CONCLUSION: Yes, under A.R.S. § 18-159(A) and (B) which provides as follows:

"A. The department may construct, maintain and operate on highway property roadside parks for the use and benefit of the public.

B. The department may construct and erect on highway property signs and plaques marking points of historical importance, but such signs and plaques shall not be erected unless they have been certified as reasonably authentic and historically correct by the director of the department of library and archives."

QUESTION 27: How many states have extended unemployment compensation to state employees, including highway personnel?

QUESTION 28: What would be the cost of such an extension to Arizona?

CONCLUSION: The Employment Security Commission is doing research on questions 27 and 28 and an opinion will be rendered as soon as possible.

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